

# Alert prawni

## New types of offences, harsher penalties.

The impact of the amendments to the criminal code on the criminal liability of managers.

On 1 October 2023, amendments to the Criminal Code that were passed over a year ago will come into force. The solutions adopted as part of the reform mentioned above represent a further tightening of penal policy and have raised concerns in some circles and institutions (including the Ombudsman). By virtue of the above-mentioned provisions, new types of offences were introduced into the Criminal Code and the statutory punishments assigned to a number of other types of offences were increased. The legislature also decided to allow the court to prohibit the conditional release of a person sentenced to life imprisonment.

### **But why might the amendments to the Criminal Code coming into force on 1 October 2023 be relevant to business managers?**

**First**, from 1 October 2023, offenders will face more accountability for certain offences committed in the context of business transactions:

- the gift or promise to a public official (a person exercising a public function) of a financial advantage worth more than PLN 1,000,000 carries a penalty of imprisonment of **between three and 20 years** (previously from two to 12 years in cases where the value of the benefit exceeded PLN 200,000);

# RYMARZ • ZDORT \ MARUTA



- theft, misappropriation, and fraud in relation to property worth more than PLN 5,000,000 carries a penalty of imprisonment for a term of **between three and 20 years**, and, in relation to property worth more than PLN 10,000,000, carries a penalty of imprisonment for a term of **between five and 25 years** (previously between one and ten years in cases where the value of the property exceeded PLN 200,000);
- an offence of causing property damage in excess of PLN 5,000,000 to an entity in which the offender is required to deal with property affairs or business activity carries a penalty of imprisonment of **between three and 20 years**. If an offender has caused damage with a value in excess of PLN 10,000,000, they will be subject to imprisonment of **between five and 25 years** (previously it was between one and ten years in cases where the value of the damage exceeded PLN 1,000,000); and
- managerial bribery in relation to property with a value in excess of PLN 5,000,000 carries a penalty of imprisonment for a term of **between three and 20 years**. If the offender has committed an offence in relation to property with a value in excess of PLN 10,000,000, they are subject to imprisonment for a term of **between five and 25 years** (previously it was between one and ten years in cases where the value of the damage exceeded PLN 1,000,000).

Thus, the above-mentioned offences will become **felonies**.

**Second**, the scope of persons who may file a request for the prosecution of a person responsible for managing the company's property or its operations, whose actions caused an imminent threat of a substantial financial loss will be extended. So far, in a situation where the wronged party was not the State Treasury, only the wronged party (the company) was entitled to file such a request. However, under the provisions entering into force on 1 October 2023, a motion for prosecution, in a situation where the wronged party is not the State Treasury, may also be filed by a partner, shareholder or interest holder of the wronged company. The explanatory memorandum to the bill indicates that the amendment "is intended to enable such proceedings to be initiated by any interested entity in terms of its property interest within a given organisational structure". The above does not change the fact that only the company will remain the victim of the above-mentioned offence, and it is the company that will be entitled to exercise its rights by acting as a party to criminal proceedings. It appears that the change described above in terms of expanding the scope of persons entitled to file a request for prosecution may encourage the use of criminal law instruments in corporate disputes.

# RYMARZ • ZDORT \ MARUTA

**Third**, we note that the rules on the application of punitive measures involving the deprivation of public rights, the prohibition to hold certain positions, and to practise a certain profession, have also been tightened. In the case of proceedings relating to certain economic offences (including offences by a person responsible for managing the company's property or its operations that cause a substantial financial loss, and money laundering), as of 1 October 2023, the court may deprive the offender of their public rights.

Moreover, **if a person holding a position involving the performance of a public function** (i.e. a public official) is convicted of such an offence, a court has to prohibit them from:

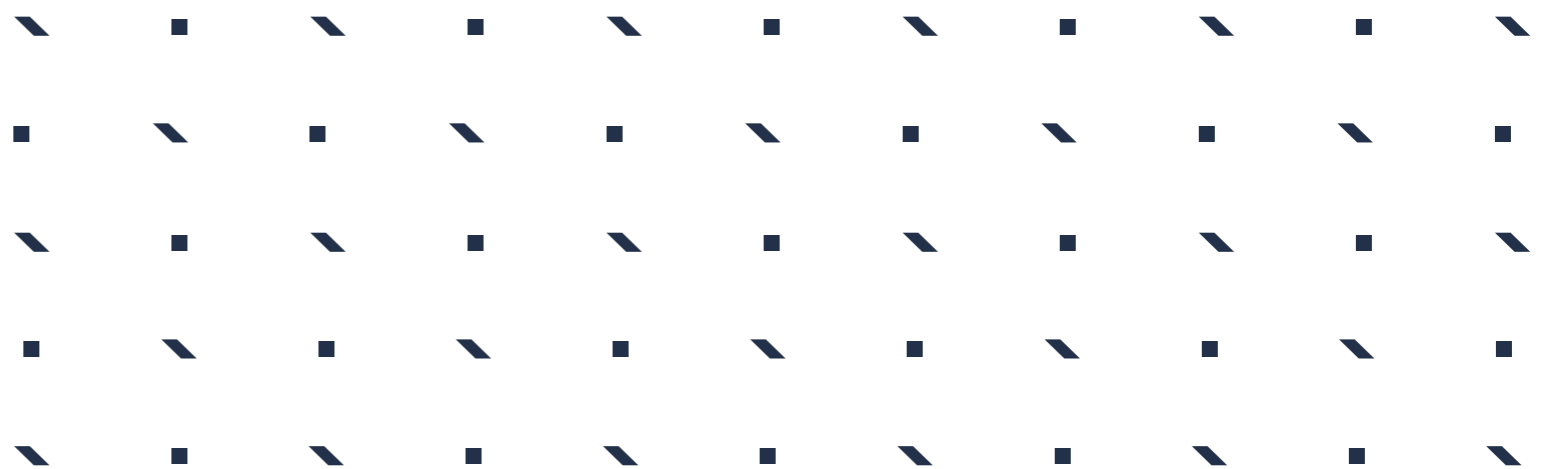
- (i) holding specific (or any) positions; or
- (ii) practicing specific (or any) professions; or
- (iii) performing specific (or any) work on the basis of an employment relationship, an agency contract, a mandate contract (or any other contract for the provision of services to which, in accordance with the Civil Code, the provisions on mandate apply), or a contract for specific work, in state and local government bodies and institutions, as well as in companies in which the State Treasury or a local government unit holds, directly or indirectly, at least a 10% interest. A court will be able to impose the above-mentioned prohibitions in the event of the conviction of a person for such an offence who does not currently hold a position involving the performance of a public function.



**Fourth**, the legislation will make it more difficult for offenders to benefit from extraordinary leniency. Until the entry into force of the amendments, the court had to apply extraordinary leniency to an offender who committed an offence with accomplices, if the offender has disclosed information about the persons involved in the commission of the crime and the relevant circumstances of the crime. Pursuant to the provisions entering into force on 1 October 2023, the court will apply extraordinary leniency in such cases only at the request of the public prosecutor.

# RYMARZ • ZDORT \ MARUTA

**Fifth**, the general provisions on the imposition of penalties will be tightened. Previously, the minimum number of daily rates of fine that the court could impose (a fine is imposed in daily rates (which daily rate is calculated based on offender's income, personal and family conditions, property possessed and earning capacity), specifying the number of daily rates and the amount per rate) was ten. Following the amendment, with regard to an offence punishable by imprisonment for up to one year, the lower limit of the fine will be 50 daily rates. In the case of an offence punishable by imprisonment for up to two years, the lower limit of the fine will be 100 daily rates, and for offences punishable by imprisonment for more than two years - 150 daily rates. The rules for imposing a penalty of restriction of liberty have been tightened in a similar manner. Previously, the minimum sentence was one month. Following the amendment, with regard to an offence punishable by imprisonment for up to one year, the lower limit for restriction of liberty will be two months. In the case of an offence punishable by imprisonment for up to two years, the lower limit of the restriction of liberty will be three months, and four months for offences punishable by imprisonment of more than two years.

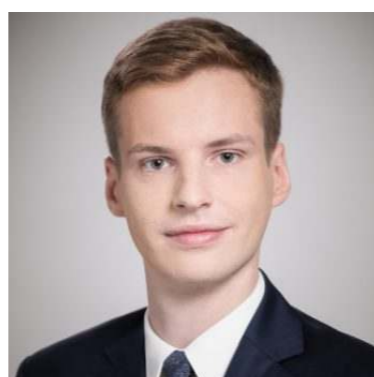


## Kontakt



**Karina Aust-Niewiadomska**

karina.aust-niewiadomska@rzmlaw.com  
+48 600 092 671



**Jakub Szewczak**

jakub.szewczak@rzmlaw.com  
+48 663 092 756

Imagine  
having us  
on your side.

**Rymarz Zdort Maruta** was formed as a result of the merger of two prominent law firms – Rymarz Zdort, a leader in many areas of transactional practice, and Maruta Wachta, a forerunner and pioneer in technology transformation. Both firms have for years been recognised by clients and the market, and are ranked at the top of the league tables as first-choice firms in their respective legal disciplines on account of advising on the largest and most important transactions for clients. As a result of combining two unique firms, we have created a modern law firm with unparalleled abilities that is focused on fast and comprehensive problem-solving. Our firm combines the experience and quality of the global firm from which Rymarz Zdort emerged with the innovation that comes from independently building and developing a law firm. Boasting a team of more than 160 lawyers, never before have clients had such a high-calibre legal advisor at their disposal.



Rymarz, Zdort, Maruta, Wachta, Gasiński, Her i Wspólnicy sp.k.

ul. Prosta 18, 00-850 Warszawa

+48 22 520 4000

[www.rzmlaw.com](http://www.rzmlaw.com)